

**SEP 26 2005**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

NORMAN POWELL,

Plaintiff - Appellant,

v.

JAMES T. COOK; et al.,

Defendants - Appellees.

No. 04-15851

D.C. No. CV-02-01128-RCJ

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Robert C. Jones, District Judge, Presiding

Submitted September 12, 2005\*\*

Before: REINHARDT, RYMER, and HAWKINS, Circuit Judges.

Norman Powell, an Oregon state prisoner, appeals pro se the district court's summary judgment in favor of defendants in his 42 U.S.C. § 1983 action alleging

---

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

that prison officials used excessive force against him. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court's grant of a motion for summary judgment, *Barnett v. Centoni*, 31 F.3d 813, 815 (9th Cir. 1994) (per curiam). We review for abuse of discretion discovery rulings, *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 726 (9th Cir. 1999), and the denial of a motion to reconsider, *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1441 (9th Cir. 1991). We affirm.

The district court properly granted summary judgment to defendants on Powell's excessive force claim because Powell failed to raise a genuine issue of material fact as to whether defendant Cook applied force maliciously and sadistically to cause harm, rather than in a good-faith effort to restore discipline after Powell attempted to leave his cell in his underwear. *See Clement v. Gomez*, 298 F.3d 898, 903-04 (2002).

The district court did not abuse its discretion by denying Powell's motion to reconsider because Powell did not present any new evidence, additional argument, or other reason to justify reconsidering summary judgment for the defendants. *See Fed. R. Civ. P. 59(e); Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003).

The district court did not abuse its discretion by denying Powell's discovery motions because Powell failed to certify that he had conferred or attempted to

confer with the defendants pursuant to Fed. R. Civ. P. 37(a)(2)(B).

Powell's remaining contentions lack merit.

**AFFIRMED.**